

WARREN H. NELSON, JR. #104744
A PROFESSIONAL CORPORATION
6161 El Cajon Boulevard, # 273
San Diego, CA 92115
Telephone: (619) 269 4212
Facsimile: (619) 501 7948
Email: nelson@rolando.sdcoxmail.com

Attorney for Defendant
STANDARD INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RANDY R. MITCHELL D.D.S.,) Case No.:
)
Plaintiff,) DEFENDANT STANDARD INSURANCE
) COMPANY'S NOTICE OF REMOVAL
vs.)
)
MINNESOTA LIFE INSURANCE)
CCOMPANY, STANDARD INSURANCE)
COMPANY, AND, DOES 1 through)
10, inclusive,)
)
Defendants.)

PLEASE TAKE NOTICE that defendant STANDARD INSURANCE COMPANY ("Standard") hereby removes to this Court the following action on file in the California Superior Court:

1. On September 26, 2007, the action, Randy R. Mitchell D.D.S., Plaintiff, v. Minnesota Life Insurance Company, Standard Insurance Company, AND, DOES 1 through 10, inclusive, Defendants, was filed in the Superior Court of California, County of Alameda, and assigned case No. VG07348221.

SERVICE NOT YET COMPLETED

2. Standard has received an incomplete copy of the Complaint. Although service was attempted on October 15, 2007, Standard was **not** served with page 10 of the Complaint, which is the signature page of the Complaint. True and correct copies of the summons, the Complaint (missing the signature page, p. 10, which was not served), and all other material that Standard received on October 15, 2007 is collectively attached hereto as Exhibit A.

3. Standard also received a copy of the summons and complaint by mail on October 19, 2007. Again, Standard did **not** receive page 10 of the Complaint, which is the signature page of the Complaint. True and correct copies of the material received by mail, the summons, the Complaint (missing the signature page, p. 10, which was not served), and all other material that Standard received by mail on October 19, 2007 is collectively attached hereto as Exhibit B.

4. Defendant Minnesota Life Insurance Company ("Minnesota Life") also received an incomplete copy of the Complaint. Although service was attempted on October 24, 2007, Minnesota Life was **not** served with page 10 of the Complaint, which is the signature page of the Complaint. True and correct copies of the summons, the Complaint (missing the signature page, p. 10, which was not served), and all other material that Minnesota Life received on October 24, 2007 is collectively attached hereto as Exhibit C.

5. Neither Standard nor Minnesota Life has as yet been served with a complete copy of the Complaint but Standard has

1 downloaded the missing page 10 from the website of the Superior
2 Court of California, County of Alameda, and attaches hereto as
3 Exhibit D a true and correct copy of that page, along with all
4 other documents and pages downloaded from the file of the
5 Superior Court that have not been served upon Standard or
6 Minnesota Life.

7 **JURISDICTION—DIVERSITY OF CITIZENSHIP**

8 6. Standard alleges that this Court has original
9 jurisdiction over this matter pursuant to 28 U.S.C. section
10 1332, which is removable pursuant to 28 U.S.C. section 1441(b)
11 based upon the complete diversity of citizenship of the parties
12 to this action and that the amount in controversy exceeds
13 \$75,000.00, exclusive of interests and costs.

14 7. Minnesota Life is a Minnesota corporation with its
15 principal place of business in Ramsey County, St. Paul,
16 Minnesota. Plaintiff admits that Minnesota Life is a Minnesota
17 corporation. Ex A-4 (Complaint and Jury Demand ¶ 6 p 2).

18 8. Standard is an Oregon corporation with its principal
19 place of business in Multnomah County, Portland, Oregon.
20 Plaintiff admits that Standard is an Oregon corporation. Ex A-4
21 (Complaint ¶ 7 p 2).

22 9. Standard has not been notified that any DOE defendant
23 has been served and on that basis alleges that no DOE defendant
24 has been served in this matter.

25 10. Plaintiff admits that at all relevant times he has
26 been and is a resident of Alameda County, California. Ex A-4
27 (Complaint ¶ 5 p 2).

1 11. Thus, as between plaintiff and each defendant there
2 exists complete diversity of citizenship, as neither Minnesota
3 Life (Minnesota corporation with principal place of business in
4 Minnesota) nor Standard (Oregon corporation with principal place
5 of business in Oregon) has its principal place of business or is
6 incorporated in California.

7 **JURISIDICITION-AMOUNT IN CONTROVERSY**

8 12. The amount in controversy is in excess of \$75,000.00,
9 exclusive of interest and costs, as to each defendant. Although
10 plaintiff alleges that Standard "confirmed" that it was the
11 administrator of the policy at issue, which he claims was
12 originally issued by Minnesota Life, and also alleges that
13 Standard has "assumed" liability under the policy at issue Ex A
14 -4 to A-5 (Complaint ¶¶ 8, 11), plaintiff alleges no variance in
15 the alleged respective liability of Standard and Minnesota Life.
16 Thus, in each of the two causes of action in the Complaint,
17 plaintiff names both Standard and Minnesota Life, making no
18 distinction of any kind as to the respective extent of alleged
19 liability or culpability to him for alleged wrongdoing of either
20 Standard or Minnesota Life. See Ex A-8, A-10 (Complaint,
21 Heading Listing Defendants to First Cause of Action, p 6;
22 Complaint, Heading Listing Defendants to Second Cause of Action,
23 p 8).

24 13. This is an insurance "bad faith" action arising out of
25 the denial of plaintiff's disability insurance benefits claim.
26 See Ex A-3 to A-29 (Complaint, generally). Plaintiff seeks
27 damages both in contract and in tort.

1 14. **Contract Damages:** Plaintiff has alleged that he
2 became disabled on June 30, 2006. Ex A-5 (Complaint ¶ 12 p 3).
3 Plaintiff further alleges that he has been entitled to \$3000.00
4 a month in disability benefits following the expiration of a 30-
5 day waiting period after onset of disability. Ex A-5 (Complaint
6 ¶ 9 p 3). Thus, from the end of the alleged 30-day waiting
7 period following the alleged date of disability (June 30, 2006),
8 i.e., from July 30, 2006 to the present, sixteen months have
9 elapsed with contract (policy) damages of \$3000.00 a month,
10 according to the allegations of the Complaint. According to
11 plaintiff's allegations, the total contract damages are now at
12 least \$48,000.00 (sixteen months @ \$3000.00 a month =
13 \$48,000.00) and are increasing by \$3000.00 per month.

14 15. **Tort Damages:** But in addition to \$48,000.00 in
15 current contract damages, plaintiff also simultaneously alleges
16 entitlement to recover four additional, separate items of damage
17 in tort--"other economic and consequential damages," "[g]eneral
18 damages for mental and emotional distress," so-called "Brandt"
19 damages (attorney fees and costs plaintiff incurs to recover
20 policy benefits) and "[p]unitive and exemplary damages." Ex A-9
21 to A-10 (Complaint ¶¶ 28-32 pp 7-8, Prayer for Relief ¶¶ 1-4
22 p 9). Standard is informed and believes and thereon alleges
23 that, on its face, the request for punitive damages alone
24 renders this action one in which the amount in controversy is
25 several multiples in excess of \$75,000.00. When considered in
26 conjunction with plaintiff's allegations of entitlement to
27 economic and consequential damages, damages for emotional
28 distress and "Brandt" damages, these allegations, again, on

1 their face, render this action one in which the amount in
2 controversy is several multiples in excess of \$75,000.00.
3 Finally, Standard is informed and believes and thereon alleges
4 that plaintiff currently claims entitlement to receive all
5 contract benefits allegedly payable to him for the life of the
6 policy at issue, a sum Standard estimates to be in excess of
7 \$350,000.00.

8 **JURISDICTION—COMMENT RE "FEDERAL QUESTION" JURISIDICICTION**

9 16. Standard does not know whether (and therefore does not
10 currently assert that) the Employee Retirement Income Security
11 Act, 29 U.S. C. sections 1001, et seq. ("ERISA"), governs the
12 claim of plaintiff. The policy at issue appears to be an
13 individual policy issued to plaintiff that would generally be
14 governed by the common and statutory law of the State of
15 California as opposed to ERISA. It is possible that, if
16 plaintiff, who was allegedly a dentist, obtained or maintained
17 the policy at issue through or incident to his employment or
18 self-employment (or under some other applicable set of
19 circumstances) that ERISA might govern this claim, and, if ERISA
20 did govern this claim, it would be subject to "Federal Question"
21 jurisdiction in this Court. If Standard determines that ERISA
22 governs this action, it will so advise plaintiff and this Court.

23 **ATTACHMENT OF GENERAL DENIAL FILED PRIOR TO REMOVAL**

24 17. Standard files herewith as Exhibit E a true and
25 correct copy of its and Minnesota Life's general denial and
26 affirmative defenses that were served by mail on plaintiff and

27 --

28 --

1 filed in the Superior Court of California, County of Alameda,
2 prior to removal of this action.

3 Dated: November 12, 2007

4 /s/
WARREN H. NELSON, JR.
5 A PROFESSIONAL CORPORATION
6 6161 El Cajon Boulevard, # 273
San Diego, CA 92115

7 Attorney for Defendant
8 STANDARD INSURANCE COMPANY
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28